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April 20, 2016

Transmitted via U.S. Mail and Electronic Mail

Secretary Rick Brajer
North Carolina Department of Health and Human Services
2001 Mail Service Center
Raleigh, NC 27699

RE: Second Public Records Request Regarding DHHS's Collection, Retention, and Use of Patient Information Under Revised N.C. Gen. Stat. § 14-45.1(b1) and (c).

Dear Secretary Brajer,

I am writing on behalf of the American Civil Liberties Union of North Carolina with a second request for public records related to the implementation of the revised North Carolina General Statute § 14-45.1(b1) and (c). This request is made pursuant to the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1.

Under the revised § 14-45.1, which went into effect January 1, 2016, physicians who perform abortions after the sixteenth week of pregnancy must provide DHHS with the following information: (1) the method used by the physician to determine the probable gestational age of the fetus at the time the abortion is to be performed; (2) the results of the methodology, including the measurements of the fetus; and (3) an ultrasound image of the fetus that depicts these measurements. N.C. Gen Stat. § 14-45.1(b1). As you likely are aware, this law specifically requires that this information be provided to DHHS “for statistical purposes only” and states that the confidentiality of the patient and the reporting physician must be protected. *Id.* The State Center for Health Statistics of DHHS has generated a revised Confidential Induced Abortion Case Report form for physicians to complete to comply with these reporting requirements. (DHHS 1891 (Revised 11/2015)).

The ACLU of North Carolina sent its first request for records related to N.C. Gen. Stat. § 14-45.1(b1) and (c) on December 4, 2015. This request follows up on our original request. Pursuant to N.C. Gen. Stat. § 132-1, we request that DHHS provide:

- (1) All documents in DHHS's custody, and DHHS communications, related to the review of the ultrasound images and gestational age as reported on the Confidential Induced Abortion Case Report form and on the ultrasound images;
- (2) All documents in DHHS's custody, and DHHS communications, relating to proposals or plans to develop a database containing the ultrasound images, or containing information

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derived from the ultrasound images or the Confidential Induced Abortion Case Report form;

- (3) All documents in DHHS's custody, and DHHS communications, concerning the DHHS Archives policy for storing, maintaining, and disposing of the ultrasound images submitted pursuant to N.C. Gen. Stat. § 14-45.1(b1); and
- (4) All documents in DHHS's custody, and DHHS communications, related to proposed or planned activities for monitoring and enforcing compliance with N.C. Gen Stat. § 14-45.1(b1) and (c).

As used in numbers (1) through (4) above, the word "documents" means any and all paper and electronic writings, included but not limited to policies, directives, guidelines, memoranda, and protocols, as well as any drafts of such writings.

As used in numbers (1) through (4) above, the phrase "DHHS communications" includes any and all paper or electronic communications received by any DHHS employee, sent by any DHHS employee, or to which any employee of DHHS is a party, and includes any communication between DHHS employees as well as any communication between a DHHS employee and a person not affiliated with DHHS.

Because this request is on a matter of public concern and because it is made on behalf of a non-profit organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than \$50. Please continue to send us documents in electronic form if at all possible. Should you withhold some portions of the requested documents on the grounds that they are exempt from disclosure, please specify which exemptions apply and release any portions of the records for which you do not claim an exemption.

Please provide all responsive records by May 4, 2016 to the mailing address indicated on this letter or to cbrook@acluofnc.org. Please feel free to contact me with any questions you may have. Thank you for your prompt attention to this matter.

Sincerely,


Christopher Brook
Legal Director
ACLU of North Carolina

cc. Eleanor Howell, Director, State Center for Health Statistics, DHHS